



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 3, 1997

Mr. William H. Bingham  
McGinnis, Lochridge & Kilgore, L.L.P.  
1300 Capitol Center  
919 Congress Avenue  
Austin, Texas 78701

OR97-0229

Dear Mr. Bingham:

As counsel for the Round Rock Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103351.

The school district received a request for "the letter to Coach Spring and Coach Tartar that resulted from our . . . level I hearing." You assert that the requested information is excepted from required public disclosure based on Government Code section 552.101 in conjunction with Education Code section 21.355. You also assert that the requested information is excepted from public disclosure based on Government Code section 552.102.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "[a] document evaluating the performance of a teacher or administrator is confidential." You suggest that the requested information is covered by this Education Code provision.

While the Education Code does not define "document evaluating the performance" for purposes of section 21.355, this office has stated that the common and ordinary meaning of these words should be applied. *See* Open Records Decision No. 643 (1996). We do not believe the commonly understood meaning of "document evaluating the performance" includes the requested information. We, therefore, conclude that the school district may not withhold the requested information from the requestor based on section 552.101 in conjunction with Education Code section 21.355.

Section 552.102 excepts from public disclosure certain information in a public employee's personnel file. The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We do not believe the requested information is protected from public disclosure based on the common-law right to privacy. Accordingly, the school district may not withhold the information from the requestor based on section 552.102 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 103351

Enclosure: Submitted document

cc: Ms. Diane Shapiro  
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(w/o enclosure)